IN THE HIGH COURT OF JUDICATURE AT BOMBAY

IN ITS INSOLVENCY JURISDICTION

PETITION NO.115 OF 2005

Re : A. M. Parmar & Ors. ..Debtors.

Ex-parte :
J. J. T. Lalvani ..Petitioning Creditor.

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Mr. P.V. Shah for the Petitioning Creditor.
Mr. A. Rege with Mr. S.A. Dedanwala i/b Adamali Dedanwala & Co. for the Debtors.

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CORAM: DR. D.Y. CHANDRACHUD, J.
3rd October, 2006.

P.C. :

The facts material for a decision on the Insolvency Petition are thus :

In Suit 1341 of 1998 filed before this Court on 26th March, 1998, Consent Terms were arrived at on 30th March, 1998 with the Original Defendants. The Respondents to these proceedings executed a letter of guarantee under Section 145 of the Code of Civil Procedure, 1908 on 12th November, 1998. A decree was passed against the original Defendants on 7th March, 2000. A Chamber Summons was taken out in execution, being Chamber Summons 1393 of 2001 and on 24th/25th October, 2002 a Learned Single Judge of this Court allowed the Chamber Summons holding

that the Respondents and the Debtors were personally liable in respect of the decretal dues under Section 145 of the Code of Civil Procedure. On 22nd July, 2003 a second set of consent terms came to be arrived at to which the Debtors to these proceedings admittedly were parties by which the decretal dues were quantified at Rs.31.25 lacs and installments were granted for the payment thereof. The Debtors to these proceedings took out Chamber Summons 932 of 2003 in the execution proceedings praying for an order in terms of the consent terms. An order was accordingly passed on 23rd July, 2003. Part payment of Rs.6 lacs was effected in pursuance of the Consent Terms. There was a default in the payment of the remaining balance. According to the Petitioning Creditor the decretal dues as on 31st March, 2005 were in the amount of Rs.2.82 Crores. The Insolvency Notice was issued on 13th April, 2005 and was served personally on Debtor No.2 on 19th April, 2005. The act of insolvency on the part of Debtor No.2 was complete on 25th May, 2005. Debtors 1 and 3 were served by a substituted mode on 20th June, 2005 and the act of insolvency was complete on 26th July, 2005.

At the hearing of the Petition reliance has been placed

on the judgment of the Supreme Court in **Amar Chand v. Bhano**[1] and it has been submitted in defence to the Petition that when the decree holder has entered into a compromise with the principal debtor and discharged him from the liability towards the performance of the decree, this must in law be regarded as full satisfaction of the decree under Section 47, thereby relieving the guarantor or surety from his obligation towards the decree holder. While the principle of law which emerges from the decision of the Supreme Court is settled, that would not advance the case of the Debtors any further for the reason that the Debtors themselves were a party to the second consent terms dated 22nd July, 2003. In these circumstances, there is no merit in the only defence that has been urged before the Court in the Insolvency Petition. The Insolvency Petition would accordingly have to be made absolute. The Insolvency Petition is made absolute in terms of prayer clauses (a) and (b).

Counsel appearing for the Debtors undertakes to file his Vakalatnama by tomorrow.

1 AIR 1995 SC 871.